

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SOUTHERN NEVADA WATER  
AUTHORITY,

Appellant,

vs.

COYOTE SPRINGS INVESTMENTS, LLC, et  
al

Respondents.

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**SUPREME COURT**  
**CASE NO. 84741**  
**District Court Case No.**  
**A-20-816761-C**

**OPPOSITION TO EMERGENCY MOTION TO STAY NRAP 27(E) OF**  
**DISTRICT COURT’S ORDER GRANTING PETITIONS FOR JUDICIAL**  
**REVIEW PENDING APPEAL**

**NRAP 26.1 DISCLOSURE STATEMENT**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Respondent Coyote Springs Investment, LLC (“CSI”) is a Nevada limited liability company. Wingfield Nevada Group Holding Company, LLC is a parent company of CSI, and no publicly traded company owns 10% or more of its stock.

CSI is presently represented by Kent Robison and Hannah Winston of Robison, Sharp, Sullivan & Brust, Bradley Herrema of Brownstein Hyatt Farber Schreck, LLP, William Coulthard of Coulthard Law, and Emilia Cargill.

In the course of the proceedings leading up to this appeal, CSI was also represented by Therese Shanks.

DATED this 6<sup>th</sup> day of June, 2022.

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**OPPOSITION TO EMERGENCY MOTION TO STAY NRAP 27(E) OF  
DISTRICT COURT'S ORDER GRANTING PETITIONS FOR JUDICIAL  
REVIEW PENDING APPEAL**

Coyote Springs Investments, LLC (“CSI”) opposes Appellant’s Emergency Motion for Stay under NRAP 27(E) of District Court’s Order Granting Petitions for Judicial Review Pending Appeal and Appellant’s request for immediate action.

**I. OVERVIEW**

This case is not about protecting existing water rights. Nor is it about protecting public interest, the public health, or public safety. SNWA’s arguments are inaccurate and misleading. The State Engineer continues to oversee and control CSI’s right to use its permitted water regardless of this appeal.

This case is about the State Engineer’s violation of water right holders’ due process. This case is about the State Engineer ignoring and violating Nevada statutes which govern the State Engineer’s duty to regulate and administer water rights in the State of Nevada. Simply stated, this case is about the State Engineer’s abuse of power.

After an extended administrative hearing that occurred in the fall of 2019, the State Engineer issued Order 1309 in June of 2020. Order 1309 attempted to improperly regulate, curtail, and modify the existing water rights held by CSI and others. CSI and seven other parties holding ground water rights filed Petitions for Judicial Review. After substantial briefing and a week of oral argument, the

District Court granted CSI's Petition for Judicial Review and declared that Order 1309 violated Nevada statutes, the prior appropriation doctrine, and deprived CSI of due process.

SNWA also filed a Petition for Judicial Review in which it too argued that Order 1309 was invalid, unconstitutional, and *harmed senior water rights*.

SNWA's Petition for Judicial Review, like CSI's, sought to *invalidate* Order 1309. Like CSI, SNWA prevailed. Now it appeals its victory.

However, on the last day of closing argument, SNWA announced to the District Court that it had settled its Petition for Judicial Review with the State Engineer. SNWA and another party insisted on putting the settlement "on the record". The only condition to effectuating the full and complete settlement was that the board had to approve the terms of the settlement.

Also, SNWA has failed, perhaps purposefully, to inform this Honorable Court that CSI's use of its permitted ground water rights is already restricted and limited by a contract entered among CSI, SNWA, and others. SNWA's hyperbolic exaggerations about a *hypothetical* that 38,000-acre feet per year will be pumped from the seven hydrological basins is fabricated, self-serving nonsense. The Motion should be denied.

## **II. SNWA SETTLED AND HAS NO STANDING TO APPEAL**

SNWA sought to invalidate Order 1309. *See* 1 RES CSI 000055-000188.

SNWA succeeded. But it won its case *after* it settled its disputes with the State Engineer. As noted above, SNWA announced that it settled its case against the State Engineer on February 18, 2022. SNWA must live by its deal. It convinced the District Court that it settled. The State Engineer agreed. On April 19, 2022, the District Court ruled in favor of CSI and other non-settling Petitioners against the State Engineer. For obvious reasons, SNWA was not even mentioned in the District Court's April 19, 2022 Order.

Before any Notice of Appeal was filed, SNWA filed a motion to stay the District Court's order pending an appeal not yet noticed or filed but one that "would be" noticed and filed. Perplexed by SNWA's curious machinations, CSI opposed SNWA's Motion to Stay and pointed out that SNWA was no longer a party because it settled. In response, SNWA claimed that the settling parties were having difficulties with the final draft of their settlement agreement. Regardless of their motives, the State Engineer and SNWA have settled, and SNWA has no standing to appeal the issues which it resolved by its settlement. This Court should require SNWA to abide by its representations made to the District Court that it and the State Engineer have settled.

SNWA's only goal is to assist the State Engineer with its effort to reverse the District Court's decision which declared Order 1309 to be in violation of applicable Nevada statutes and an order that violated CSI's Due Process rights.

These findings do not confer standing on SNWA to appeal.

“This Court has consistently taken a restrictive view of those persons or entities that have standing to appeal as parties.” *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994). Therefore, under NRAP 3A(a), “only ‘aggrieved parties’ may appeal.” *Las Vegas Police Protective Ass’n Metro, Inc. v. Eighth Jud. Dist. Ct.*, 122 Nev. 230, 239, 130 P.3d 182, 189 (2006) (footnote omitted).

This Court has further explained that “[a] party is ‘aggrieved’ within the meaning of NRAP 3A(a) ‘when either a personal right or right of property is adversely and substantially affected’ by a district court’s ruling.” *Id.* at 239-40, 130 P.3d at 189 (quoting *Valley Bank*, 110 Nev. at 446, 874 P.2d at 734). Moreover, this Court noted that “[a]s we recognized in the 1913 case of *Esmeralda County v. Wildes*, a substantial grievance also includes ‘[t]he imposition of some injustice, or illegal obligation or burden, by a court, upon a party, or the denial to him of some equitable or legal right.’” *Id.* (quoting *Esmeralda County v. Wildes*, 36 Nev. 526, 535, 137 P. 400, 402 (1913)).

Here, SNWA not only settled with the State Engineer, but SNWA’s Petition for Judicial Review was also granted in part as SNWA challenged Order 1309 as well. SNWA, as an intervening party, defended the State Engineer and Order 1309. However, that does not mean that SNWA is an aggrieved party under NRAP 3(A)(a)

because SNWA's defense of Order 1309 does not implicate any equitable or legal right. Rather, SNWA simply attempted to support and supplement the State Engineer's Answering Brief as though SNWA was an amicus curiae. But SNWA's desire to be the State Engineer's co-counsel does not mean that Order 1309 being declared void actually impacts or effects SNWA's *legal or equitable interests*.

SNWA's Motion references the need to protect the Moapa dace, senior rights, and the public interest. But SNWA has no special connection to the Moapa dace that would afford it the ability to advocate for the species of fish or that would cause SNWA to have a legal or equitable interest that is impacted by Order 1309 being declared void. SNWA's interest in protecting the dace is no greater than any member of the public. SNWA cannot participate as a party in this appeal simply to defend "the public interest". Further, as explained below, SNWA and CSI are both contractually bound to manage their water rights to protect the Moapa dace.

Moreover, SNWA's attempt to establish standing to appeal by claiming that Order 1309 protects senior water rights holders is disingenuous and legally incorrect. Primarily, Order 1309 being declared void does not harm senior water rights holders. There are several tools and statutes available to the State Engineer to manage ground and surface water. Declaring Order 1309 void simply means the State Engineer has to use the available tools within the bounds of his statutory authority. Having to follow the law is not grounds to claim immediate harm. SNWA is not an aggrieved

party and cannot be party to this appeal. The Motion should be denied.

### **III. EVEN IF SNWA HAS STANDING, A STAY IS NOT WARRANTED**

“In deciding whether to issue a stay, this Court generally considers the following factors:

- (1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;
- (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;
- (3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and
- (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

*Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). These factors weigh against a stay in this case.

#### **i. The Object of the Appeal Will Not be Defeated if the Stay Is Denied.**

SNWA characterizes the object of the appeal as “the protection of senior surface water rights and habitat for the Moapa dace.” Motion, p. 8. SNWA argues that because the State Engineer concluded in Order 1309 that pumping in excess of 8,000 afa *could* conflict with Muddy River decreed rights, that, absent a stay, pumping will occur that will harm SNWA’s rights. However, declaring Order 1309 void does not mean that pumping in excess of 8,000 afa will automatically occur, and it is highly misleading for SNWA to repeatedly refer to the fact that 38,000 afa are permitted throughout the basins in the Lower White River Flow System to imply



that it is possible that the water rights holders in those basins could possibly all begin pumping that much water. SNWA knows that the annual use of ground water in the illegally combined basins was never more than a fraction of the 38,000 afa.

There is a process that water rights holders and the State Engineer must follow. The object of this appeal is to determine whether the State Engineer followed the law by entering Order 1309. He did not. An invalid order that is outside the bounds of clear Nevada law does not set the status quo. The opposite is true, and SNWA's attempt to argue that Order 1309 is somehow the status quo is simply wrong. Moreover, SNWA's hyperbolic argument that 38,000 afa of water could suddenly be pumped unless a stay is imposed has already been proven false. SNWA conveniently glosses over the fact that the State Engineer continues to halt CSI's use of its water rights. Declaring Order 1309 void has not stopped the State Engineer from interfering with CSI's water rights. In fact, the State Engineer has already refused to sign CSI's subdivision maps. *See* 2 RES CSI 000262-000263. A stay order will only allow the State Engineer additional time to delay following his statutory mandates and duties. This Court should refuse to allow Order 1309 to have any further impact on CSI's water rights.

Order 1309 is certainly not the only mechanism to avoid any purported and hypothetical harm to senior water rights holders or the dace. SNWA's misleading narrative to the contrary should be rejected.

**ii. SNWA Will Not Suffer Any Injury if the Stay Is Denied.**

SNWA will not suffer irreparable injury without a stay because Order 1309 is not the sole tool available to the State Engineer to ensure that senior water rights are protected. SNWA blatantly ignores the impact of the MOA to which CSI, SNWA, and others are party. The MOA includes provisions for self-imposed curtailment upon specific conditions such as the flow rate decreasing to 3.2 cubic feet per second. *See* 1 RES CSI 000010-000012. The MOA detailed mitigation measures each party would take to reduce potential adverse effects to the Moapa dace or its habitat. *See id.* CSI cannot, therefore, pump water without restriction as SNWA attempts to argue.

Worse, SNWA's entire motion is premised on speculative, hypothetical harm to general "senior water rights" without any specific, actual harm identified. SNWA's entire claim of harm to "senior water rights" is completely disingenuous given that SNWA specifically argued in its opening brief in the District Court that the State Engineer was "allowing junior groundwater pumpers to continue to capture senior Muddy River water rights" in Order 1309. *See* 1 RES CSI 000221. Now, SNWA tells this Court that only Order 1309 can avoid this issue. SNWA's changing positions highlight the gamesmanship and improper tactics being employed to delay enforcement of the District Court's Order. The Motion must be denied.

**iii. CSI Will Suffer Irreparable and Serious Injury if the Stay Is Granted.**

CSI has already suffered irreparable injury because its use and enjoyment of the water rights it holds has been impaired and degraded by the State Engineer for years. The State Engineer has taken every opportunity to contrive reasons that CSI cannot use its water rights and continue with its development. The District Court's Order was the first glimpse of justice that CSI has seen in over a decade. Regardless of whether this Court stays enforcement of the District Court's Order, the State Engineer will likely manufacture yet another ploy to prevent CSI from using its water rights. Notwithstanding, this Court should not allow Order 1309 to fulfil that role in the interim. Order 1309 is so blatantly improper and contrary to Nevada law that it should have no ability to impact CSI's significant and substantial interests in its water rights. The stay should be rejected.

**iv. CSI Is Likely to Prevail on the Merits in the Appeal.**

In Order 1309, the State Engineer for the first time in Nevada history, attempted to erase the boundaries of seven established hydrographic basins and combine them into one for "joint administration". This brazen action must raise a glaring red flag to this Court, which is intimately familiar with Nevada's water law. The State Engineer does not have authority to combine multiple basins into one for "joint administration". Unlike the State Engineer and SNWA, the District Court

conducted a proper statutory interpretation analysis, which unequivocally demonstrated that the State Engineer did not have authority to issue Order 1309. Moreover, the District Court acknowledged the State Engineer's clear disregard for CSI's due process rights.

SNWA argues that the State Engineer was acting pursuant to NRS 534.030 in entering Order 1309. This manufactured theory must be rejected as the State Engineer did not even take that position in its briefing in the District Court. SNWA's argument would require rewriting history and Order 1169, Interim Order 1303, Order 1309, and the State Engineer's answering brief in the District Court. Proving SNWA's argument even more frivolous is the fact that several of the basins involved have already been designated under NRS 534.030. *See* 1 RES CSI 000037-000038. It is absurd for SNWA to argue that Order 1309 *repeated* that process. SNWA will not prevail in this appeal.

#### **IV. CONCLUSION**

SNWA has not met its burden to demonstrate that a stay is warranted in this case. It settled its case against the State Engineer. Accordingly, CSI respectfully requests that this Court deny the Motion.

**Affirmation:** Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 6<sup>th</sup> day of June, 2022.

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## CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 27(d), I hereby certify that this Opposition to Emergency Motion to Stay NRAP 27(E) of District Court’s Order Granting Petitions for Judicial Review Pending Appeal (“Opposition”) complies with the formatting requirements of NRAP 27(d)(1), the typeface requirements of NRAP 32(a)(5), and the type-style requirements of NRAP 32(a)(6) because this Opposition has been prepared in a proportionally spaced typeface using 14-point font, Times New Roman style. I further certify that this Opposition complies with the page limits of NRAP 27(d)(2) as it does not exceed 10 pages, calculated in accordance with the exclusions of NRAP 32(a)(7)(C).

Pursuant to NRAP 28.2, I hereby certify that I have read this Opposition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Opposition complies with all applicable Nevada Rules of Appellate Procedure.

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I understand that I may be subject to sanctions in the event that this Opposition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 6th day of June, 2022.

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**CERIFICATE OF SERVICE**

I certify that on the 6<sup>th</sup> day of June 2022, I served a copy of **OPPOSITION TO EMERGENCY MOTION TO STAY NRAP 27(E) OF DISTRICT COURT'S ORDER GRANTING PETITIONS FOR JUDICIAL REVIEW PENDING APPEAL** upon all counsel of record:

\_\_\_\_\_ BY MAIL: I placed a true copy thereof enclosed in a sealed envelope addressed as follows:

\_\_\_\_\_ BY FACSIMILE: I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below:

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DATED: This 6<sup>th</sup> day of June, 2022.

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